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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

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FILED
Jul 26 2004
JUL 26 2004
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE
Nsi #1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
ADR
E-FILING

SUSAN MEZZETTI,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY; and DOES 1
through 30, inclusive,

Defendants.

C04 CASE NO. **03022** **HRL**

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY'S NOTICE OF
REMOVAL OF CIVIL ACTION UNDER
28 U.S.C. SECTIONS 1332 AND 1441(a)
[DIVERSITY JURISDICTION];
DEMAND FOR JURY TRIAL**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that defendant STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY (hereinafter "STATE FARM") hereby removes to this Court the state
action described below:

1. STATE FARM is a defendant in the civil action commenced on June 16, 2004 in the
Superior Court of the State of California, County of Santa Clara, Case No.
104CV021627, entitled Mezzetti v. State Farm Mutual Automobile Insurance
Company.
2. STATE FARM was served with a copy of the complaint on or about June 29, 2004.
A true and correct copy of the Complaint is attached hereto as Exhibit "1" and is

1 incorporated as part of this notice.

- 2 3. This action is a civil action of which this Court has original jurisdiction under 28
3 U.S.C. section 1332, and is one that may be removed to this Court by STATE
4 FARM pursuant to the provisions of 28 U.S.C. section 1441, subdivision (a), in that
5 it is a civil action wherein the matter in controversy exceeds the sum of \$75,000
6 exclusive of interest and costs, and is between citizens of different states.
- 7 4. The fact that the amount in controversy exceeds the minimum requirement for
8 diversity jurisdiction can be determined by the nature and extent of damages alleged
9 in the complaint. Plaintiff alleges she sustained injuries in a motor vehicle accident
10 that resulted in a default judgment against the owner and purported operator of the
11 other vehicle involved in the accident, Nancy Clewett, in the amount of \$624,813.75.
12 (Complaint, ¶8.) Plaintiff was insured by State Farm under a policy with uninsured
13 motorist ("UM") policy limits of \$100,000. (Complaint, ¶5.) Plaintiff received UM
14 benefits for her accident-related injuries from STATE FARM in the amount of
15 \$100,000. (Complaint, ¶8.) Clewett was also allegedly insured by STATE FARM.
16 (Complaint, ¶¶9, 22 and 23.) Plaintiff seeks damages against STATE FARM in
17 excess of \$200,000 for purported failure to adequately investigate and process the
18 claim. (Complaint, ¶12.) Plaintiff also alleges there is a dispute as to whether
19 STATE FARM is entitled to reimbursement of the \$100,000 UM policy limits
20 pursuant to the terms of plaintiff's policy. (Complaint, ¶8.) Plaintiff claims general
21 damages of \$500,000 for mental suffering and emotional distress. (Prayer for Relief,
22 No. 2, p. 9:22 – 24.) Plaintiff also alleges entitlement to punitive damages and
23 attorney's fees. (Prayer for Relief, Nos. 3 and 4, p. 9:25 – 27.)
- 24 5. At the time of the commencement of this action, and at all times since, STATE
25 FARM has been, and still is, a corporation of the State of Illinois, being incorporated
26 under the laws of Illinois, and has had and continues to have its principal place of
27 business in Illinois. Plaintiff SUSAN MEZZETTI has been and continues to be a
28 citizen of the State of California, having been a resident of the State of California.

1 (Complaint, ¶1.)

2 6. This action was brought in the State of California. This corporate defendant is not,
3 at the time of the institution of this action, and is not now, a corporation incorporated
4 under the laws of the State of California, and does not have at the time of the
5 institution of this action, and does not have now, its principal place of business in
6 California.

7 **DEMAND FOR JURY TRIAL**

8 STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY hereby demands a
9 trial by jury.

10
11 Dated: July 26, 2004

HAYES, DAVIS, ELLINGSON, McLAY & SCOTT

12
13
14 By 

15 STEPHEN M. HAYES
16 STEPHEN P. ELLINGSON
17 Attorney for Defendant
18 STATE FARM MUTUAL AUTOMOBILE
19 INSURANCE COMPANY
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(ENDORSED)
FILED

JUN 16 04

KIRI TORRE
CHIEF CLERK/CLERK
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA

J. Paura

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12 Attorneys for Plaintiff,
13 SUSAN MEZZETTI

14 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

104CV021627

15 SUSAN MEZZETTI,

16 Plaintiff,

17 v.

18 STATE FARM MUTUAL AUTOMOBILE
19 INSURANCE COMPANY and DOES
20 1 through 30, inclusive,

21 Defendants.

NO.

COMPLAINT FOR TORTIOUS BREACH
OF INSURANCE CONTRACT; BREACH
OF THE COVENANT OF GOOD FAITH AND
FAIR DEALING; COLLECTION/
SATISFACTION OF JUDGMENT UNDER
INSURANCE CODE §11580; DECLARATORY
RELIEF; FRAUD-FALSE REPRESENTATION;
CONSTRUCTIVE FRAUD-CIVIL CODE §1573;
AND NEGLIGENT MISREPRESENTATION

22 1. Plaintiff SUSAN MEZZETTI is, and at all relevant times was, a resident of Santa
23 Clara County California.

24 2. Defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY is,
25 and all times herein mentioned was, a corporation organized and existing under the laws of the

26 State of Illinois and authorized by the California Insurance Commissioner to transact and
27 transacting business in the State of California and, specifically, in the County of Santa Clara, as
28 a casualty insurer.

Complaint

1 3. Plaintiff is unaware of the true identity, nature and capacity of each of the
2 defendants designated herein as a DOE. Plaintiff is informed and believes and thereon alleges
3 that each of the defendants designated herein as a DOE is in some manner responsible for the
4 damages and injuries as are alleged in this complaint. Upon learning the true identity, nature
5 and capacity of the DOE defendants, plaintiff will amend this complaint to allege their true names
6 and identities.
7

8 4. Plaintiff is informed and believes and thereon alleges that at all material times
9 herein alleged that the defendants, and each of them, were the agents, servants, and employees
10 of the other defendants, and each of them.
11

12 5. On or before February 11, 1995, in consideration of the payment of an annual
13 premium \$324.49, made by plaintiff Susan Mezzetti, defendant, by its duly authorized agents,
14 executed and delivered to plaintiff in San Jose, California, an automobile policy of insurance,
15 bearing number 795 3624-B11-05J, hereafter referred to as "the policy", in and by which
16 defendant undertook to and did insure plaintiff for, *inter alia*, Uninsured and Underinsured Motor
17 Vehicle Coverage (Section III) related to the operation of her 1990 Volvo 240. The policy
18 covered incidents which occurred between February 11, 1995, and August 11, 1995, inclusive.
19

20 6. On or about May 5, 1995, plaintiff suffered a serious auto accident in which said
21 accident was caused by a vehicle owned by Nancy Clewett, and also insured by defendant.
22

23 7. On or about June 30, 1995, defendant informed plaintiff's counsel, by letter of that
24 date, that "Based on our investigation, there was no State Farm Policy in force on the vehicle
involved on the above date of loss."
25

26 8. Plaintiff and her counsel relied upon this information in seeking the alternative
27 remedy: a claim under the Uninsured Motorist Coverage of the policy. Thus, in February of
28 1996, plaintiff agreed to a policy limit settlement of \$100,000 cash under the Uninsured Motorist

1 Coverage. Plaintiff's claim was in fact at least \$624,813.75, which was eventually obtained by
2 way of a judgment against the Clewett. Said judgment was entered on October 15, 1999. At
3 the time this judgment was entered, plaintiff was unaware there was a contract of insurance
4 between Nancy Clewett and defendant due to defendant's representations that none existed.
5

6 9. On August 28, 2002, plaintiff and plaintiff's counsel discovered that in reality,
7 Nancy Clewett did in fact have a valid policy in effect on May 5, 1995, said policy covering a
8 vehicle involved in the subject accident. Plaintiff also discovered that defendant had either
9 constructive or actual notice of Nancy Clewett's coverage relating to the accident, and willfully
10 informed her otherwise in the above referenced letter of June 30, 1995.
11

12 FIRST CAUSE OF ACTION
(Tortious Breach of Insurance Contract)

13 10. Plaintiff realleges and incorporates by reference paragraph numbers 1 through 9,
14 inclusive.
15

16 11. By the provisions of the policy, as well as the legal obligations imposed on any
17 insurance contract in this state, defendant represented in legal effect to plaintiff that if plaintiff
18 complied with all the terms and conditions of the policy, defendant would act in good faith in
19 delivering the benefits of the policy. Defendant also had a duty to reasonably investigate
20 plaintiff's claims, including the existence and nature of any liability policy in effect at the time of
21 the accident. Plaintiff duly complied with all the terms and conditions of the policy on her part
22 to be performed, yet defendant knowingly and falsely conveyed to plaintiff that Clewett did not
23 have an insurance policy that would cover the accident in order to reduce the overall exposure
24 to defendant in defending the actions and indemnifying any settlement or judgment.
25

26 12. As a proximate result of defendant's failure and refusal to properly investigate and
27 otherwise process the claim, plaintiff has been damaged in the amount of \$200,000, plus
28 interest.

1 13. As a further proximate result of defendant's failure and refusal to pay the claim as
2 herein alleged, Plaintiff has been damaged in the amount of \$7,500.00 to date, in attorney's fees
3 in order to prosecute this suit.

4 14. Defendants acted maliciously, fraudulently, and with oppression by knowingly
5 depriving plaintiff of her rights and benefits under the contract, and by intentionally
6 misrepresenting the nature and legal effect or the existence of defendant's policy issued to
7 Clewett so as to dissuade plaintiff from pursuing her rights therein. Said conduct was calculated
8 to vex, harass, and annoy Plaintiff, and escape defendant's obligations under the policy.
9 Accordingly, Plaintiff is entitled to punitive and exemplary damages against Defendants, and
10 each of them, in a sum to be determined at the trial of this action.
11

12
13 SECOND CAUSE OF ACTION
14 (Breach of the Covenant of Good Faith and Fair Dealing)

15 15. Plaintiff realleges and incorporates by reference paragraph numbers 1 through 14,
16 inclusive.

17 16. In every contract, each party owes a duty of good faith and fair dealing to the other
18 party. Defendants breached the implied covenant of good faith and fair dealing arising out of
19 the policy in the following respects:

20 [a] Defendants unreasonably and without proper cause failed and refused to
21 conduct a proper investigation as the existence of a policy of insurance covering Clewett for the
22 above reference accident; and,

23 [b] Defendants affirmatively represented that Clewett had no policy that would
24 cover the accident. Defendants knew, or should have known that this was untrue.
25

26 17. Defendant conduct in falsely denying a Clewett policy existed for the accident, and
27 then allowing plaintiff to proceed under a Uninsured Motorist claim was done without reasonable
28 cause. As a direct and proximate result of the unreasonable conduct of defendants, plaintiff has

1 been required to retain attorneys to obtain benefits due under the policy.

2 18. As a direct result of the tortious conduct of the defendants, plaintiff was damaged
3 and injured, and is therefore entitled to recover:

4 [a] Reasonable attorney's fees incurred in obtaining policy benefits in an
5 amount to be proved at time of trial;

6 [b] General damages as compensation for her emotional distress in an amount
7 that is to be proved as time of trial; and,

8 [c] Special damages in an amount to be proven at trial.

9
10 19. Defendants acted maliciously, fraudulently, and with oppression by knowingly
11 depriving plaintiff of her rights and benefits under the contract, and by intentionally
12 misrepresenting the nature and legal effect or the existence of defendant's policy issued to
13 Clewett so as to dissuade plaintiff from pursuing her rights therein. Said conduct was calculated
14 to vex, harass, and annoy Plaintiff, and escape defendant's obligations under the policy.
15 Accordingly, Plaintiff is entitled to punitive and exemplary damages against Defendants, and
16 each of them, in a sum to be determined at the trial of this action.

17 THIRD CAUSE OF ACTION

18 (Collection/Satisfaction of Judgment Under Insurance Code § 11580.)

19 20. Plaintiff realleges and incorporates by reference paragraph numbers 1 through 19,
20 inclusive.

21 21. On October 15, 1999, plaintiff obtained a judgment against defendant's insured,
22 Nancy Clewett, in the amount of \$624,813.75. A true and correct copy of the judgment, which
23 is now final, is attached to this complaint as Exhibit "A".

24 22. At the time of the accident causing the damages alleged above, Nancy Clewett
25 was insured by a policy of liability insurance covering the ownership, operation, and use of a
26 vehicle involved in the accident, and the operator of said vehicle was the legal cause of the

1 accident and resulting damages. Said operator was either Nancy Clewett or a permissive user
2 of the vehicle.

3 23. Defendant's policy was issued and/or delivered in California and, as such, is
4 governed by Insurance Code § 11580, which authorizes plaintiff to sue defendant for recovery
5 of the judgment described above.
6

7 24. The policy issued by defendant to Clewett provides coverage for the bodily injuries
8 suffered by plaintiff, and defendants are therefore obligated to pay plaintiff the amount of the
9 judgment, up to the policy limit, plus interest from the date the judgment was entered.

10 FOURTH CAUSE OF ACTION
11 (Declaratory Relief)

12 25. Plaintiff realleges and incorporates by reference paragraph numbers 1 through 24,
13 inclusive.

14 26. An actual controversy exists between the parties concerning their respective rights
15 and duties because plaintiff contends and defendant disputes that defendant is not entitled to
16 any reimbursement or refund, in any amount, from the \$100,000 benefit paid by defendant to
17 plaintiff pursuant to the Uninsured/Underinsured provisions of the policy.
18

19 27. Plaintiff desires a declaration that defendant does not have the right to
20 reimbursement or refund of the benefits referred to above so long as plaintiff's recovery from all
21 sources both before and after her judgment was issued .

22 FIFTH CAUSE OF ACTION
23 (Fraud-False Representation)

24 28. Plaintiff realleges and incorporates by reference paragraph numbers 1 through 27,
25 inclusive.

1 29. In informing plaintiff of Clewett's purported lack of coverage, defendant knew or
2 should have known that such representation was false. In fact, Clewett did have a relevant
3 policy of insurance covering the accident, and said policy was issued by defendant.

4 30. Defendant made these representations with the intent to defraud plaintiff, and
5 induce plaintiff to not seek benefits under Clewett's policy.
6

7 31. Plaintiff did not no that defendant's representation was false, and Plaintiff
8 reasonably relied on these representations to her detriment by not asserting any rights against
9 Clewett's policy, and by seeking to recover from defendant only under the Uninsured Motorist
10 provisions of her own policy.

11 32. Plaintiff was proximately damaged as a result of defendant's false representation
12 in that she did not seek indemnification under Clewett's policy for her damages, but rather as
13 against defendant, asserted only an Uninsured Motorist claim. Said claim was of less value than
14 a claim against Clewett's policy in that benefits paid under a UM claim were subject to
15 defendant's right to reimbursement. Had plaintiff known about the existence of Clewett's policy,
16 she would not have sought relief via the Uninsured Motorist coverage of her own policy, but
17 would have settled for the policy limit under Clewett's policy, and looked to the Underinsured
18 Motorist portion of plaintiff's policy to cover a portion of the difference between the Clewett's
19 policy limits and the actual damages sustained. Said claim was an additional \$100,000 under
20 the UIM policy.
21

22 33. Defendants acted maliciously, fraudulently, and with oppression by knowingly
23 depriving plaintiff of her rights and benefits under the contract, and by intentionally
24 misrepresenting the nature and legal effect or the existence of defendant's policy issued to
25 Clewett so as to dissuade plaintiff from pursuing her rights therein. Said conduct was calculated
26 to vex, harass, and annoy Plaintiff, and escape defendant's obligations under the policy.
27
28

1 Accordingly, Plaintiff is entitled to punitive and exemplary damages against Defendants, and
2 each of them, in a sum to be determined at the trial of this action.

3 SIXTH CAUSE OF ACTION
4 (Constructive Fraud-Civil Code § 1573)

5 34. Plaintiff realleges and incorporates by reference paragraph numbers 1 through 33,
6 inclusive.

7 35. Defendant owed plaintiff a duty of good faith and fair dealing, and also to
8 ascertain the validity of any representations that would be material to plaintiff's knowledge and
9 understanding of her benefits under the policy.
10

11 36. In making the false representations as hereinabove alleged, defendant breached
12 this duty to the detriment of plaintiff, and defendant has gained an advantage over plaintiff by
13 doing so. Plaintiff has therefore been proximately damaged in the specifics herein alleged.

14 37. Defendants acted maliciously, fraudulently, and with oppression by knowingly
15 depriving plaintiff of her rights and benefits under the contract, and by intentionally
16 misrepresenting the nature and legal effect or the existence of defendant's policy issued to
17 Clewett so as to dissuade plaintiff from pursuing her rights therein. Said conduct was calculated
18 to vex, harass, and annoy Plaintiff, and escape defendant's obligations under the policy.
19 Accordingly, Plaintiff is entitled to punitive and exemplary damages against Defendants, and
20 each of them, in a sum to be determined at the trial of this action.
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1 SEVENTH CAUSE OF ACTION
2 (NEGLIGENT MISREPRESENTATION)

3 38. Plaintiff realleges and incorporates by reference paragraph numbers 1 through 13,
4 15-18, 20-29, 31-32, 35-36, inclusive.

5 39. When defendant represented that Clewett had no applicable policy of insurance
6 that would cover the above referenced auto accident, it did so with no reasonable ground for
7 believing it to be true. It also did so without conducting a reasonable investigation of the grounds
8 for the representation.
9

10 40. This representation was in fact false. In truth, Clewett did have a policy of
11 insurance, issued by defendant, that covered a vehicle involved in the accident.

12 41. Defendant made this representation with the intent to defraud plaintiff and to
13 induce her to act as described above. At the time plaintiff acted, she did not know the
14 representations were false and believed they were true. Plaintiff acted in justifiable reliance
15 upon the truth of the representations.
16

17 42. As a proximate result of defendant's misrepresentations, plaintiff has been
18 damaged in an amount within this courts jurisdiction, and to be proven at trial.

19 WHEREFORE, Plaintiff prays judgment against defendants as follows:

20 1. For the sum of \$200,000, with interest thereon at the legal rate from the date of
21 loss, until paid;

22 2. For general damages in the amount of \$500,000 for mental suffering and
23 emotional distress;

24 3. For attorney's fees, plus reasonable legal costs, for the necessity of filing this
25 lawsuit to enforce legal rights;

26 4. For exemplary and punitive damages;

27 5. For a declaration of rights under the policy that defendant has no right to
28

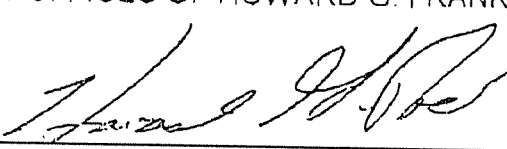
1 reimbursement or refund under any and all benefits already paid to plaintiff under the Uninsured
2 and Underinsured Motorist coverage;

3 6. For costs of suit herein incurred; and

4 7. For such other and further relief as the court may deem proper.
5

6
7 DATED: June 14, 2004

LAW OFFICES OF HOWARD G. FRANK

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9 BY 
10 HOWARD G. FRANK
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CASE NAME: Mezzetti v. State Farm
ACTION NO.:

PROOF OF SERVICE

I am a citizen of the United States. My business address is 120 Constitution Drive, Menlo Park, California 94025. I am employed in the County of San Mateo where this service occurs. I am over the age of 18 years, and not a party to the within cause. I am readily familiar with my employer's normal business practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and that practice is that correspondence is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

On the date set forth below, following ordinary business practice, I served a true copy of the foregoing document(s) described as:

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S NOTICE OF
 REMOVAL OF CIVIL ACTION UNDER 28 U.S.C. SECTIONS 1332 AND 1441(a)
 [DIVERSITY JURISDICTION]; DEMAND FOR JURY TRIAL**

- ☐ (BY FAX) by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- ☒ (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Menlo Park, California.
- ☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand this date to the offices of the addressee(s).
- ☐ (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered to an overnight delivery carrier with delivery fees provided for, addressed to the person(s) on whom it is to be served.

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 Telephone: (408)279-8400
Attorney for Plaintiff
SUSAN MEZZETTI

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 Facsimile: (408) 287-6550
Attorney for Plaintiff
SUSAN MEZZETTI

- ☒ (Federal) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 26, 2004, at Menlo Park, California.


 Abigail Bowman